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# BOOK REVIEWS.

GEORGE W. JAKUES, *Editor-in-Charge.*

[Our reviewer denies that in his review of Mechem and Gilbert on Damages, in our last issue, he had any intention of insinuating that the editor of the book had been guilty of improper borrowing from Professor Beale's book or any other source. As some of our readers may have put this construction upon the language used, however, we gladly print the following letter from Mr. Gilbert.—Ed.]

IOWA CITY, Nov. 12, 1909.

*Editor of the COLUMBIA LAW REVIEW:*

In your issue for Nov., 1909, a reviewer of Mechem and Gilbert's Cases on Damages makes this statement:—

"It would appear, therefore, that little more credit is due to Mr. Mechem than to Mr. Beale, one-third of the cases in Beale's Cases on the Measure of Damages, published in 1895, appearing in the new collection."

The objectionable character of this excerpt lies, possibly not so much in its inaccuracy, as in the evident insinuation it carries of borrowing from Mr. Beale unduly.

Of the 334 cases in the text of Mechem and Gilbert's collection, 150 were previously published by Mr. Mechem in his book from which the present volume is a growth. Of these 150, 31 were cases that Mr. Beale had previously published in his collection of 196 cases. Of the 184 cases selected by Mr. Gilbert for the present book, 27 had previously appeared in Mr. Beale's volume. Mr. Beale has, thus, stamped with his approval by previous publication, 58 of these cases, or 17.4%, and Mr. Mechem 150, or 45%. Or, in other words, 58 cases, or 17.4% were first published by Mr. Beale, 119, or 35.6% by Mr. Mechem, and 157, or 47% by Mr. Gilbert.

There are certain decisions in any subject which no compiler in any true sense selects, but which virtually select themselves. Such are the fundamental and epoch-making cases. Without them, no collection would either be adequate or usable, for they are the very bone and muscle of the subject. Of the 58 cases previously used by Mr. Beale, 30 are unquestionably of this type, to wit, *Hadley v. Baxendale*; *Flureau v. Thornhill*; *Bain v. Fothergill*; *Huckle v. Money*; *Merest v. Harvey*; *Townsend v. Hughes*; *Cook v. Beal*; *Kemble v. Farren*; *Griffin v. Colver*; *Masterion v. Mayor*; *Cory v. Thames*; *Horne v. Ry.*; *Hopkins v. Lee*; *Margraf v. Muir*; *Brown v. C. M. & St. P.*; *Primrose v. W. U.*; *Darley v. Mitchell*; *Forsyth v. Wells*; *Roper v. Johnson*; *Lynch v. Knight*; *Cary v. Gruman*; *Baker v. Drake*; *Kountz v. Kirkpatrick*; *Lake Shore v. Prentice*; *Goddard v. Grand Trunk*; *Loker v. Damon*; *Allison v. Chandler*; *Larson v. Chase*; *Staats v. TenEyck*; and *Day v. Woodworth*. To omit a single one of these would be to ignore the very sources of the law and to incur deserved censure. Credit is due neither to Mr. Beale, to Mr. Mechem, or to Mr. Gilbert, for

the inclusion of these cases, for they could not have been omitted in an even measurably complete collection.

Certain other cases, while perhaps not coming strictly within the foregoing group, yet by reason of their wide and repeated citation, unquestionably belong in any representative collection. To discover them, one need not go to the pages of Mr. Beale's book. If he will but follow whither the decisions lead, he will inevitably encounter them. Such are *Keeble v. Keeble*; *Sutherland v. Wyer*; *Brigham v. Carlisle*; *Ellis v. Hilton*; *Ingraham v. Rankin*; *B. & P. Ry. v. Church*; *Monmouth Park v. Wallis*; *Swift v. Dickerman*; *Palmer v. Crook*; *Schlitz v. Compton*; *Smith v. Bergengren*; and *Kadish v. Young*, 12 in all. To omit these, would be to cast out our old friends, with whom every student of the law of Damages has an intimate personal acquaintance, a thing surely that one should not do, merely because Mr. Beale also delights in their friendship, particularly when there are none better.

Of the remaining 16 cases heretofore published by Mr. Beale, 7, because of their uniqueness, would probably command a place in any collection compiled by any half dozen independent investigators, i. e., *Vosburg v. Putney*; *Dennis v. Maxfield*; *Wright v. Mulvaney*; *Perrott v. Shearer*; *Phillips v. Ry.*; *Harris v. Panama*; *Glaspy v. Cabot*. They are all found in the common hunting ground of *Sutherland* and the two *Sedgwicks*.

Competent judges may differ as to the desirability of including the remaining nine cases which Mr. Beale once used, *B. & O. v. Carr*; *Stodghill v. C. B. & Q.*; *Redmond v. Am. M. Co.*; *L. & N. v. Wallace*; *Lawrence v. Hagerman*; *Demarest v. Little*; *Hayward v. Leonard*; *Bernstein v. Meech*; and *Peek v. Derry*. That they were, upon the points involved, the most usable decisions to be found after an exhaustive search, was the circumstance that seemed to justify their inclusion. One of these, *L. & N. v. Wallace*, the writer admits, he met first in Mr. Beale's volume, and hereby makes acknowledgment of his indebtedness. Possibly the reviewer has not had a wide experience in compiling case-books and therefore does not recognize that the great difficulty one has in such work is in excluding rather than in including, and further that no worthy case-book can be made that will not contain some material that has previously appeared, if the prior publication be at all worthy. And worthy indeed is Mr. Beale's short volume.

Criticism is made that a number of cases cited in the foot-notes are omitted from the index. Upwards of 700 cases are so cited. It is difficult to see what place this great mass of material has in the index. Fortunately no compiler of case-books has yet set such a fashion. Only such cases from the footnotes are included as are pressed out from the text by lack of space.

There may be two opinions upon the further suggestion as to the desirability of including new cases simply because they are new. A proper principle of inclusion involves usability rather than chronology, although it is the writer's belief that, in the absence of any other ground for choice, the old case is entitled to preference. It serves to impress the student with the foundation rather than with the superstructure of the law. Old wine, old friends, old books, old cases are best.

BARRY GILBERT.